

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.759 OF 2006

In

SUIT NO.691 OF 2006

Mr.Jatin Kirtikumar Thakkar : Plaintiff

V/s.

Mr.Narayan Venkatesh Shanbhag : Defendant

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WITH

NOTICE OF MOTION NO.761 OF 2006

In

SUIT NO.743 OF 2006

Mr.Hitesh Kirtikumar Thakkar : Plaintiff

V/s.

Mr.Narayan Venkatesh Shanbhag : Defendant

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Mr.R.D.Vora for the plaintiffs.

Mr.S.B.Prabhavalkar for the defendant.

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CORAM : S.A.BOBDE, J.

DATE : FEBRUARY 14, 2007.

P.C.

1. These Notices of Motion are taken out by the plaintiffs in suits for specific performance of the

contract. The plaintiffs pray for appointment of Receiver and/or an injunction. The plaintiffs rely on an agreement to sell dated 22.10.2004 in respect of flat nos.15A and 16A. The agreement proposed for sale of the two flats to the plaintiffs at the rate of Rs.16 lakhs each. According to the plaintiffs, they have paid Rs.4 lakhs each i.e. a total of Rs.8 lakhs by cheque on 27.10.2004. He claims to have paid the amount of Rs.6.5 lakhs which apparently the defendant has returned on a subsequent date. According to the plaintiff, he was to pay the balance within three months. However, since the co-operative society refused to enrol them as members, they could not make the payment. It is only after the Co-operative Court delivered a judgement on 30.12.2005 that the plaintiffs could make the payment which, however, has not been actually made. The plaintiffs have deposited a sum of Rs.32 lakhs in Court on 31.3.2006.

2. They, therefore, claim appointment of the Receiver with themselves as the agents since, according to them, they have complied with all the requirements of the agreement.

3. Mr.Prabhavalkar, the learned counsel for the defendant, however, submits that the defendant is an old man who intended to purchase a flat in Vile Parle and,

therefore, he wanted to sell this flat in Andheri. However, he had to terminate the agreement of 29.3.2005 since the plaintiffs did not pay the balance amount of consideration to the defendant on or before 30.11.2004. The learned counsel further submits that the receipt at exh.'E' relied on by the plaintiffs is not genuine in the sense that the last para was never agreed to by the defendant. Moreover, according to him, the receipt is signed only by the plaintiffs.

4. Mr.Prabhavalkar, the learned counsel for the defendant, stated that he has no objection if the plaintiffs are permitted to withdraw the amount deposited in Court and the defendant is also willing to deposit Rs.2,50,000/- which he has received from the plaintiff without prejudice to his rights.

5. Having considered the matter, it seems that the transaction could not be completed as contemplated by the parties. Admittedly, the plaintiffs did not or could not pay the amount within the stipulated time and the defendant claims to have terminated the contract. Moreover, the defendant submits that he does not wish to sell the flat any more because his plans to purchase another flat has been thwarted by delay on the part of the plaintiffs. In the circumstances, I do not consider it an

appropriate case to allow the prayer for Receiver made in the Motions or for monetary relief prayed for in the Motions. However, I am of view that in the interest of justice, there should be an injunction in terms of prayer clause (c). Further, the plaintiffs are permitted to withdraw the amount deposited by them in Court on 31.3.2006. The defendant is permitted to deposit a sum of Rs.2.5 lakhs in this Court within a period of four weeks from today without prejudice to his rights.

6. Notices of Motion are allowed in terms of prayer clause (c).

7. Having regard to the age of the defendant, who is a senior citizen, the suits are expedited.

S.A. BOBDE, J.